

10-CV-05010-ORD

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS DEAN HULL, JR.,

Plaintiff,

v.

REMINGTON ARMS COMPANY, INC.,

Defendant.

NO. 3:10-cv-05010 RBL

STIPULATION AND ORDER
PERMITTING PLAINTIFF TO FILE A
FIRST AMENDED COMPLAINT

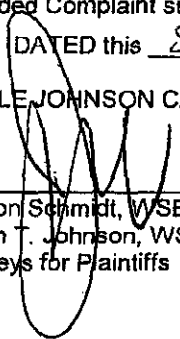
I. STIPULATION

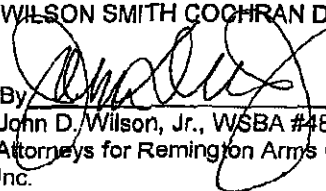
Plaintiff, Thomas Hull ("Plaintiff"), and Remington Arms Company, Inc. ("Remington") Defendant, by and through the signatures of their attorneys below, hereby stipulate that Plaintiff may file and serve a First Amended Complaint in form and substance materially conforming to Exhibit A hereto. The parties also stipulate that this First Amended Complaint supercedes the original Complaint Plaintiff filed in this action.

DATED this 8th day of February, 2010.

PEPPLE JOHNSON CANTU & SCHMIDT

WILSON SMITH COCHRAN DICKERSON

By 
Jackson Schmidt, WSBA #18484
Steven T. Johnson, WSBA #14052
Attorneys for Plaintiffs

By 
John D. Wilson, Jr., WSBA #4828
Attorneys for Remington Arms Company, Inc.

STIPULATION AND ORDER PERMITTING PLAINTIFF
TO FILE A FIRST AMENDED COMPLAINT - 1

PEPPLE JOHNSON
CANTU & SCHMIDT, PLLC
1501 WESTERN AVENUE, SUITE 600
SEATTLE, WASHINGTON 98101
(206) 625-1711 - FACSIMILE (206) 625-1627

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

Based on the foregoing stipulation, it is hereby ORDERED that Plaintiff shall file and serve a First Amended Complaint in form and substance materially conforming to Exhibit A hereto.

DATED this 9th day of February, 2010.



HON. RONALD B. LEIGHTON
Judge, U.S. District Court for the Western
District of Washington

Presented by:

PEPPLE JOHNSON CANTU & SCHMIDT PLLC

By 

Jackson Schmidt, WSBA #16484
Steven T. Johnson, WSBA #14052
Attorneys for Plaintiffs

WILSON SMITH COCHRAN DICKERSON

By 

John D. Wilson, Jr., WSBA #4828
Attorneys for Remington Arms Company, Inc.

STIPULATION AND ORDER PERMITTING PLAINTIFF
TO FILE A FIRST AMENDED COMPLAINT - 2

PEPPLE JOHNSON
CANTU & SCHMIDT, PLLC
1501 WESTERN AVENUE, SUITE 600
SEATTLE, WASHINGTON 98101
(206) 425-1711 - FACSIMILE (206) 425-1627

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 THOMAS DEAL HULL, JR.,

12 Plaintiff,

13 v.

14 REMINGTON ARMS COMPANY, INC.,

15 Defendant.

NO. 3:10-cv-05010 RBL

PLAINTIFF'S FIRST AMENDED
COMPLAINT

16 COMES NOW Plaintiff, Thomas Hull ("Plaintiff"), complaining of Remington Arms
17 Company, Inc. ("Remington") Defendant, and files this First Amended Complaint, and for his
18 cause of action would show the Court and the jury the following:

19 1.

20 JURISDICTION AND VENUE

21 1. The jurisdiction of this Court attaches under the provisions of 28 U.S.C.
22 §1332, in that the amount in controversy exceeds, exclusive of interest and costs, the sum
23 of \$75,000, and the parties are citizens of different states.
24
25
26

EXHIBIT A

FIRST AMENDED COMPLAINT - 1

PEOPLE JOHNSON
CANTU & SCHMIDT, PLLC
1501 WESTERN AVENUE, SUITE 600
SEATTLE, WASHINGTON 98101
(206) 625-1711 - FACSIMILE (206) 625-1927

2. Federal court jurisdiction is based on diversity of citizenship, and venue is proper according to 28 U.S.C. §1391 (a)(2) because the events giving rise to the claim occurred in Washington.

11.

PARTIES

3. Plaintiff Thomas Hull is a citizen of the State of Washington and resides in Port Angeles, Washington.

4. Defendant Remington Arms Company, Inc. is a corporation foreign to the State of Georgia being organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of Washington by selling, manufacturing and distributing rifles through its distributors and sales force.

III.

FACTUAL BACKGROUND

5. On October 26, 2009, a hunting buddy of Plaintiff's, Alex Sotomayor, was attempting to unload his Model 700 rifle. To unload the rifle, which was manufactured by Remington before 1982 with serial number B6343732 (before Remington removed the bolt lock from the design in 1982), the user is required to move the safety from the "S" or "safe" position to the "F" or "fire" position. The user in this case attempted to open the bolt or otherwise unload the weapon. Without pulling the trigger, the rifle fired, sending a bullet through a truck, splitting the bullet into pieces, and into Plaintiff's right leg.

6. Remington is now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action

1 rifle including the action, fire control system, and safety (hereinafter "rifle"), knowing and
2 expecting that the rifle would be used by consumers and around members of the general
3 public.

4 7. The Remington Model 700 bolt action rifle contains a dangerously defective
5 "Walker" fire control system that may (and often does) fire without a trigger pull upon
6 release of the safety, movement of the bolt, or when jarred or bumped.

7 8. Remington has designed a new trigger mechanism that is safe (and that
8 represents a safer alternative design), installing the new design in almost all of its bolt-
9 action rifles.

10 9. Plaintiff brings this action to recover damages from Defendant arising from
11 Plaintiff's personal injuries caused by this incident. Plaintiff's damages include past and
12 future medical expenses from his injuries, mental and physical pain and suffering, loss of
13 earnings, and other general and special damages in an amount to be determined by the jury
14 at the trial of this action.

15 IV.

16 COUNT I: PRODUCT LIABILITY UNDER RCW 7.72

17 10. Defendant is liable to Plaintiff under RCW 7.72, *et seq.*, for selling a
18 Remington Model 700 bolt action rifle through a dealer because it was not reasonably safe
19 as designed and manufactured and not reasonably safe because adequate warnings were
20 not provided. The Remington Model 700 purchased was not merchantable and was not
21 reasonably suited to the use intended at the time of its manufacture or sale. Plaintiff and
22 the public reasonably expected that the Remington Model 700 purchased would not fire
23 unless the trigger was activated. Remington is strictly liable for manufacturing and selling
24 (placing into the stream of commerce) the Remington Model 700 bolt action rifle with a
25
26

1 defective trigger that was the proximate cause of these personal injuries sustained by
2 Plaintiff.

3 11. The Remington Model 700 bolt-action rifle was in a defective and dangerous
4 condition because Remington had actual or constructive knowledge that the rifle was
5 dangerous to users, specifically, that the rifle has a propensity to unexpectedly discharge
6 without pulling the trigger, and Remington failed to warn of the rifle's danger. Further,
7 requiring that the safety be moved to the "fire" position for unloading also creates a
8 defective and dangerous condition. The risk was known or, at a minimum, reasonably
9 foreseeable by the Defendant.

10 12. Plaintiff nor his hunting partner had knowledge of this defective condition and
11 had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent
12 discharge. Remington's communication to wholesalers about this problem – and offer to
13 wholesalers to remove the boltlock – was inadequate.

14 13. Remington's breach of its continuing duty to warn, under RCW 7.72, of the
15 700 rifle's propensity to unexpectedly discharge without pulling the trigger was a direct and
16 proximate cause of Plaintiff's injuries, and Plaintiff is entitled to recover the damages from
17 Remington.

18
19 V.

20 DAMAGES AND JURY DEMAND

21 14. As a result of Defendant's acts and/or omissions, Plaintiff has experienced
22 medical expenses, past and future, physical pain and suffering in the past and in all
23 reasonable probability will sustain physical pain and suffering in the future.

24 15. Plaintiff has suffered mental anguish in the past and in all reasonable
25 probability will sustain mental anguish in the future.

16. The above and foregoing acts and/or omissions of Defendant have caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

17. Plaintiff demands a jury.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For all monetary damages allowed under law and described, without limitation, above, plus interest;

2. For costs of suit; and

3. For such other and further relief as this Court may deem just and proper.

DATED this _____ day of February, 2010.

PEPPLE, JOHNSON, CANTU & SCHMIDT, PLLC.

Jackson Schmidt, WSBA #16848
Steven T. Johnson, WSBA #14052
Attorneys for Plaintiff
1501 Western Avenue, Suite 600
Seattle, WA 98101
206.625.1711 / 206.625.1627 Fax

HIGHTOWER LAW FIRM
Jeffrey W. Hightower, Jr., Texas Bar No. 00793951
9400 North Central Expressway, Suite 1207
Dallas, TX 75231
214.580.9800 / 214.580.9804 Fax

THE DRINNON LAW FIRM, PLLC
Stephen W. Drinnon, Texas Bar No. 00783983
1700 Pacific Avenue, Suite 2230
Dallas, TX 75201
972.445.6080 / 972.445.6089 Fax
COUNSEL FOR PLAINTIFF